Abdul Latif bin Puteh & Ors v Pentadbir Tanah Jajahan Pasir Mas & Anor

FEDERAL COURT (PUTRAJAYA) — APPEAL NO 01(i)-21–05 OF 2022(D)
VERNON ONG, HASNAH HASHIM AND MARY LIM FCJJ
16 NOVEMBER 2022

Civil Procedure — Striking out — Writ and statement of claim — Whether High Court and Court of Appeal erred in allowing application to strike out plaintiffs' suit on ground it was 'obviously unsustainable' — Whether plaintiffs' claim in fact showed existence of a reasonable cause of action and issues of law and fact which merited determination in a full trial

The appellants, who comprised the original participants and their beneficiaries/descendants, were selected in the 1980s by the Federal Land Consolidation and Rehabilitation Authority ('FELCRA') to clear and develop 2656 acres of land in Bukit Tandak, Kelantan. The land scheme, known as KRBT, was developed under the Land (Group Settlement Areas) Act 1960 ('Act 530') although it was never *gazetted* as a group settlement area under s 4 of Act 530. The appellants claimed they were initially allocated six acres of land each in KRBT to cultivate with, amongst others, oil palm and rubber trees, using their own funds. They were also allocated lands within KRBT to erect their houses. Sometime in 2014, when the acreage allotted to the appellants was allegedly reduced to three acres per participant, the appellants sued the respondents ('Suit 1') over the reduction but the High Court dismissed the suit, holding that the claim was misplaced as the appellants had no rights to the KRBT land. The Court of Appeal ('COA') had affirmed that decision and leave to appeal further to the Federal Court ('FC') was denied. Whilst the FC appeal was pending, the first respondent had called for tenders to fell the rubber trees in KRBT without the appellants' knowledge and without paying them any compensation. This caused the appellants to sue the respondents again, this time for damages and compensation for the loss of their rubber trees. The respondents relied upon the decision in Suit 1 to contend that since it was already determined that the appellants had no rights to the KRBT land — which belonged to the State — they, consequently, had no rights to the rubber trees as well since the trees were planted on and became part of the land and thereby also became the property of the State. To support this proposition, the respondents relied upon the definition of 'land' in s 5 of the National Land Code. The High Court agreed with the respondents and granted their application to strike out the appellant's suit for, inter alia, lack of a cause of action. The COA upheld the verdict on finding that the appellants' claim was 'obviously unsustainable'. The COA further found that the KRBT land was

never *gazetted* and/or brought within the ambit of Act 530 as a group settlement area, nor did the appellants have any formal agreement with FELCRA or any State authority which could have entitled them to claim some species of equitable right or estoppel. The appellants were granted leave to appeal to the Federal Court against the COA's decision.

Held, unanimously allowing the appeal, setting aside the decisions of the courts below and remitting the case back to the High Court for a full trial:

(1) Contrary to the findings of the courts below, on the pleaded facts and circumstances particularly under the restrictions and conditions of Act 530, the appellants had a reasonable cause of action which merited proper determination in a full trial. The questions of law on which leave to appeal was granted by the Federal Court indicated that there were real issues of law and fact which required a proper determination in a full trial. The matter should not have been summarily disposed of in the manner done by the courts below (see paras 4 & 32–33).

(2) What was clear and undisputed from the pleadings and affidavits was that there was a group settlement area known as KRBT. Whether or not this area was *gazetted*, and the ramifications of that on the appellants' claim, if at all, was a question for determination in a full trial. The appellants' occupation and participation in the KRBT was not denied by the respondents who were fully aware that such occupation as a group settlement area was as envisaged under Act 530. There was no suggestion that the appellants were illegal occupants, squatters or the like. It was also not disputed that the appellants had occupied the lands for more than 30 years cultivating oil palm and rubber trees which were crops allowed to be planted under Act 530. Subject to conditions under Act 530, occupation in these group settlement areas involved an expectation of title (see paras 25 & 27–28).

(3) What was in controversy was the manner of selection of the appellants as participants to occupy and cultivate the designated crops under Act 530, that it was by FELCRA Bhd where no agreement was finally drawn up; that the appellants' names were not registered and that the lands in question were not *gazetted*. Whether in these principal circumstances, the appellants had any interests or rights to the rubber trees they had cultivated over such a long and undisturbed period thereby entitling them to any relief including compensation, was a real and substantive matter or issue of law that clearly required full and proper examination at trial (see para 31).

(4) The matter of the felling of the rubber trees arose during the pendency of Suit 1. Hence, the issue of res judicata did not arise. It also did not arise in that these were not rubber trees that were randomly planted by the

appellants but cultivated in the circumstances of a group settlement area as envisaged under Act 530 (see para 29). A

[Bahasa Malaysia summary

Perayu-perayu, yang terdiri daripada peserta asal dan waris/keturunan mereka, telah dipilih pada 1980-an oleh Lembaga Penyatuan dan Pemulihan Tanah Persekutuan ('FELCRA') untuk membersihkan dan membangunkan tanah seluas 2656 ekar di Bukit Tandak, Kelantan. Rancangan tanah yang dikenali sebagai KRBT tersebut dibangunkan di bawah Akta Tanah (Kawasan Penempatan Berkelompok) 1960 ('Akta 530') walaupun ia tidak pernah diwartakan sebagai kawasan penempatan berkelompok di bawah s 4 Akta 530. Perayu mendakwa mereka diperuntukkan pada mulanya, enam ekar tanah masing-masing di KRBT untuk diusahakan, antara lain, pokok kelapa sawit dan getah, menggunakan dana mereka sendiri. Mereka juga diperuntukkan tanah dalam KRBT untuk mendirikan rumah mereka. Sekitar 2014, apabila keluasan yang diperuntukkan kepada perayu didakwa dikurangkan kepada tiga ekar bagi setiap peserta, perayu menyaman responden ('Guaman 1') berhubung pengurangan tersebut tetapi Mahkamah Tinggi menolak saman tersebut, dengan memutuskan bahawa tuntutan tersebut adalah salah arah kerana perayu tidak mempunyai hak ke atas tanah KRBT. Mahkamah Rayuan ('MR') telah mengesahkan keputusan tersebut dan kebenaran untuk merayu selanjutnya ke Mahkamah Persekutuan ('MP') telah ditolak. Sementara rayuan MP belum selesai, responden pertama telah meminta tender untuk menebang pokok getah di KRBT tanpa pengetahuan perayu dan tanpa membayar sebarang pampasan. Ini menyebabkan perayu menyaman responden sekali lagi, kali ini untuk ganti rugi dan pampasan atas kehilangan pokok getah mereka. Responden bergantung kepada keputusan dalam Guaman 1 untuk menghujahkan bahawa memandangkan ianya telah pun ditentukan bahawa perayu tidak mempunyai hak ke atas tanah KRBT — yang dipunyai oleh Negeri — mereka, sebagai akibatnya, tidak mempunyai hak ke atas pokok getah juga kerana pokok tersebut telah ditanam di atas dan menjadi sebahagian daripada tanah dan dengan itu juga menjadi hak milik Negara. Untuk menyokong pendapat ini, responden bergantung kepada takrifan 'tanah' dalam s 5 Kanun Tanah Negara. Mahkamah Tinggi bersetuju dengan responden dan membenarkan permohonan mereka untuk membatalkan saman perayu kerana, antara lain, kekurangan kausa tindakan. MR mengekalkan keputusan pada dapatan bahawa tuntutan perayu adalah 'jelas tidak dipertahankan'. MR selanjutnya memutuskan bahawa tanah KRBT tidak pernah diwartakan dan/atau dibawa dalam lingkungan Akta 530 sebagai kawasan penempatan berkelompok, dan perayu juga tidak mempunyai sebarang perjanjian rasmi dengan FELCRA atau mana-mana pihak berkuasa Negeri yang melayakkan mereka menuntut beberapa jenis hak ekuiti atau estoppel. Perayu telah diberikan kebenaran untuk merayu kepada Mahkamah Persekutuan terhadap keputusan MR.

B C D E F G H I

Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan Mahkamah di bawah dan menyerahkan semula kes tersebut ke Mahkamah Tinggi untuk perbicaraan penuh:

(1) Bertentangan dengan dapatan mahkamah di bawah, mengenai fakta dan keadaan yang diplidkan khususnya di bawah sekatan dan syarat Akta 530, perayu mempunyai kausa tindakan yang munasabah yang memerlukan penentuan sewajarnya dalam perbicaraan penuh. Persoalan undang-undang di mana kebenaran merayu diberikan oleh Mahkamah Persekutuan menunjukkan bahawa terdapat isu undang-undang dan fakta sebenar yang memerlukan penentuan sewajarnya dalam perbicaraan penuh. Perkara tersebut tidak sepatutnya diselesaikan secara ringkas dengan cara yang dilakukan oleh mahkamah di bawah (lihat perenggan 4 & 32–33).

(2) Apa yang jelas dan tidak dapat dipertikaikan daripada pliding dan afidavit adalah bahawa terdapat kawasan penempatan berkelompok yang dikenali sebagai KRBT. Sama ada kawasan ini telah diwartakan atau tidak, dan kesannya terhadap tuntutan perayu, jika ada, adalah persoalan untuk penentuan dalam perbicaraan penuh. Pendudukan dan penyertaan perayu dalam KRBT tidak dinafikan oleh responden yang menyedari sepenuhnya bahawa pendudukan tersebut sebagai kawasan penempatan berkelompok adalah seperti yang dibayangkan di bawah Akta 530. Tidak ada cadangan bahawa perayu adalah penghuni haram, setinggan atau sebagainya. Ia juga tidak dipertikaikan bahawa perayu telah menduduki tanah selama lebih daripada 30 tahun dengan mengusahakan kelapa sawit dan pokok getah yang merupakan tanaman dibenarkan untuk ditanam di bawah Akta 530. Tertakluk kepada syarat di bawah Akta 530, pendudukan di kawasan penempatan berkelompok ini melibatkan jangkaan pemilikan (lihat perenggan 25 & 27–28).

(3) Apa yang menjadi kontroversi adalah cara pemilihan perayu-perayu sebagai peserta untuk menduduki dan mengusahakan tanaman yang ditetapkan di bawah Akta 530, bahawa ia adalah oleh FELCRA Bhd di mana tiada perjanjian akhirnya dibuat; bahawa nama perayu-perayu tidak didaftarkan dan tanah-tanah berkenaan tidak diwartakan. Sama ada dalam keadaan utama ini, perayu-perayu mempunyai apa-apa kepentingan atau hak ke atas pokok getah yang telah mereka tanam dalam tempoh yang begitu lama dan tidak terganggu sehingga melayakkan mereka mendapat sebarang pelepasan termasuk pampasan, adalah perkara atau isu undang-undang yang nyata dan substantif yang jelas memerlukan pemeriksaan sepenuhnya dan teratur semasa perbicaraan (lihat perenggan 31).

(4) Perkara penebangan pokok getah berbangkit semasa tempoh guaman 1. Oleh itu, isu res judicata tidak timbul. Ia juga tidak timbul bahawa ini bukan pokok getah yang ditanam secara rawak oleh perayu tetapi

ditanam dalam keadaan kawasan penempatan berkelompok seperti yang dibayangkan di bawah Akta 530 (lihat perenggan 29).] A

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd) B

Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 MLJ 1, FC (refd)

Tan Wei Hong (a minor suing through guardian ad litem and next friend Chuang Yin E) & Ors v Malaysia Airlines Bhd and other appeals [2019] 1 MLJ 59, FC (refd) C

Wiggins Teape (M) Sdn Bhd v Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd as objectors [1980] 2 MLJ 45 (refd)

Legislation referred to D

Courts of Judicature Act 1964 s 96(a)

Land (Group Settlement Areas) Act 1960 ss 3, 4, 5, 6, 12, 19, 34, Parts II, III, IV, V

Land Development Act 1956 s 3

National Land Code ss 5, 341 E

National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 s 6

National Land Rehabilitation and Consolidation Authority (Succession and Dissolution) Act 1997

F

Appeal from: *Abdul Latif bin Puteh & Ors v Pentadbir Tanah Jajahan Pasir Mas & Anor* [2022] 6 MLJ 569 (Court of Appeal, Putrajaya)

Mohamad Nor Azam Rashid bin Zainol (with Rashid and Mohd Nasir bin Abdullah) (Mohd Nasir & Co) for the appellant. G

Adam bin Mohamed @ Mamat (Deputy Assistant Legal Advisor, Kelantan State Legal Advisor's Office) for the respondent.

Mary Lim FCJ (delivering judgment of the court):

H

[1] The 348 appellants before us were the plaintiffs whose claims against the respondents were struck out by the High Court upon the application of the respondents (encl 29). The principal if not the sole reason for allowing the interlocutory application was because the action was 'obviously unsustainable' as the plaintiffs lacked locus standi to maintain the action. I

[2] The decision of the High Court was affirmed by the Court of Appeal.

[3] On 9 May 2022, this court granted leave to appeal under s 96(a) of the

Courts of Judicature Act 1964 ('Act 91') on the following four questions of law:

(i) Sama ada pemakaian Group Settlement Act (GSA) dan seksyen 5 Kanun Tanah Negara terpakai untuk kawasan-kawasan tanah rancangan;

(ii) Sama ada prinsip ekuiti terpakai untuk pokok-pokok yang ditanam di kawasan tanah rancangan selaras dengan Group Settlement Act (GSA);

(iii) Sama ada peserta yang dijemput, yang mengusahakan, yang mengeluarkan modal berhak ke atas pokok-pokok getah yang diusahakan mereka di kawasan tanah KRBT tersebut;

(iv) Sama ada pemilikan pokok-pokok getah terikat kepada pemilikan tanah sebagaimana seksyen 5 Kanun Tanah Negara tanpa mengambil kira faktor kependudukan, pengusahaan dan penanaman pokok-pokok getah tersebut sejak 30 tahun serta kos-kos yang mencecah RM718,247.83 dan RM5,800,155.78 yang dibiayai oleh Pemohon-Pemohon.

[4] Upon due consideration of the submissions of all parties, grounds of decisions, and the records of appeal, we unanimously allowed the appeal. We set aside the decisions of the Court of Appeal and the High Court and remitted the case to the High Court for a full trial. We were of the unanimous opinion that contrary to the findings of the courts below, there was a reasonable cause of action upon which the plaintiffs' claims ought and must proceed to full trial. In this connection, the four questions of law for which leave was earlier granted by this court are indicative that there are real issues in law and on the facts for the proper determination of the court. These are our reasons in full.

BACKGROUND FACTS

[5] Bearing in mind that the appeal emanates from an interlocutory application and that we are not concerned with the merits of the claims (see *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7), these are the underlying facts surrounding the parties before us as well as some who are not, mentioned for reasons that would soon become apparent.

[6] The appellants comprise largely the original participants selected by FELCRA Bhd to open or clear and develop 2656 acres of Lot 1404 Mukim Rantau Panjang, Daerah Rantau Panjang, Jajahan Pasir Mas, Kelantan. This area came to be known as Kawasan Rancangan FELCRA Bukit Tandak ('KRBT'), developed under the Land (Group Settlement Areas) Act 1960 ('Act 530') since early 1980. The participants of such group settlement areas are colloquially known as 'settlers' by virtue of the name of the Act. But, under Act 530 and subject to the terms prescribed under Act 530, the participants are known as 'holders'. Some of the other appellants are the beneficiaries and/or descendants of these original settlers or holders. The distinction between the

appellants is not, in our view, material at this point in time of the proceedings between the parties. In fact, it is a matter to be carefully explored. Again, this is mentioned for obvious reasons given that the matters before the court was an interlocutory application to strike out the appellants' claims where the legal principles are trite.

[7] KRBT was never *gazetted* as a group settlement area under s 4 of Act 530. Be that as it may, the appellants claimed that they were initially allocated six acres of land each in KRBT as agreed in an agreement with FELCRA which however was not formalised. Still, the appellants occupied the lands allotted and they cultivated amongst others, oil palm and rubber trees, spending what they say, substantial sums over the past 30 over years. At the same time, the appellants were also alienated separate parcels of land within KRBT for them to erect their dwelling or residential houses — see para 365 of the statement of claim.

[8] According to para 363 of the statement of claim, the respondents are said to be aware of the appellants' presence and occupation of the lands in KRBT for the last 30 years even though no agreement was ever signed with FELCRA or the respondents. Throughout this period, the appellants engaged with FELCRA and attended all meetings called by FELCRA in relation to the development of KRBT.

[9] In 2014, the acreage allotted was allegedly reduced to three acres per participant. The appellants were not happy and so they sued the first and second respondents over this reduction in acreage vide Civil Suit No DA-21 NCvC-1–04 of 2015 (Suit 1). Suit 1 was dismissed by the High Court and the decision was affirmed by the Court of Appeal. Leave to appeal was refused by the Federal Court.

[10] When Suit 1 was before the Federal Court, the first respondent called for tenders for the felling of rubber trees which the appellants claimed they had planted on the lands in question. And so, the appellants filed a second suit (Civil Suit No DA-21NCvC-14–09 of 2018 — Suit 14). The defendants there were the respondents in this appeal and also the Director of Lands and Mines, Kelantan. The latter was successful in striking out the claim but before the respondents' application for the same was heard, the appellants discontinued Suit 14.

[11] Then came the present suit ('Suit 3'). There are five defendants in this suit. The respondents in this appeal were the first and second defendants, namely Pentadbir Tanah Jajahan Pasir Mas and the State Government of Kelantan while the third to fifth defendants are the parties who were successful in the tender exercise and who were awarded the contract to fell the rubber

trees. This appeal only concerns the first two defendants. The plaintiffs did not file an application for leave to appeal to the Federal Court against the third to fifth defendants.

[12] In Suit 3, the appellants claimed that despite being fully aware of their cultivation of the rubber trees for over 30 years, the respondents, inter alia conspired, acted with mala fides and/or negligence in felling the rubber trees without their prior knowledge or consent and that such acts were a violation of their legitimate rights over the rubber trees. The appellants claimed damages and compensation for loss of the rubber trees. Other reliefs sought included declaratory orders of entitlement to the rubber trees planted by them.

[13] These contentions are not in serious dispute by the respondents in this appeal — see paras 17–19 of their defence; where the respondents principally pleaded that the appellants' participation in the group settlement area programme for KRBT did not alter the fact that the respondents remain legal owners of the lands involved. However, the respondents contended that the appellants were not registered administratively with FELCRA — see para 27 of the defence.

[14] In addition, the respondents relied on s 5 of the National Land Code, that any rubber trees planted by the appellants were the property of the respondents as the second respondent owned the lands in question. Consequently, the respondents were not obliged whether to inform or obtain the consent of the appellants before felling or entering into tenders for the felling of the rubber trees.

[15] The respondents also counterclaimed. Relying on the dismissal of Suit 1 and the subsequent dismissal of the application for leave to appeal by the Federal Court, the respondents sought a declaratory order to the effect that the rubber trees on the lands in question were lawfully owned by the second respondent. The respondents' counterclaim currently is fixed for case management at the High Court.

[16] The respondents filed encl 29 to strike out the claim on the basis of res judicata in that the appellants' claim had been adjudicated in Suit 1 where it was held that the appellants did not have any rights in law or equity against the respondents.

DECISION OF THE HIGH COURT

[17] In allowing the respondents' application, the High Court gave two reasons for its decision. First, under s 5 of the National Land Code ('the NLC'), the plaintiffs had no rights over the rubber trees that they had planted on lands

belonging to the second respondent. Second, the plaintiffs' right to the lands had already been dismissed in an earlier suit. That decision had been upheld on appeal and leave to appeal was disallowed by the Federal Court. Since the plaintiffs had no rights over the lands, they therefore had no rights over the rubber trees that they had planted on the same lands.

[18] Relying on the decision in *Wiggins Teape (M) Sdn Bhd v Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd as objectors* [1980] 2 MLJ 45 on the interpretation of s 5 of the NLC, the learned judge held that 'land' comprised 'fixtures' which 'includes all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface'. Consequently, it was immaterial who planted the rubber trees, even if it was the plaintiffs since the plaintiffs did not own the lands in the first place. The learned judge went on to hold that the second respondent in fact owned the rubber trees.

DECISION OF THE COURT OF APPEAL

[19] The Court of Appeal agreed with the High Court, that the appellants had no rights to or in the rubber trees under ss 5 and 341 of the NLC 'just because they had planted them at their own costs on the state land albeit to the knowledge of the respondents and without any protest from them'. The Court of Appeal further found that the rubber trees were planted on unalienated state land; that there was no plea or assertion that there was any contract or representation relating to the use or occupation of the lands in question or the planting of the rubber trees so as to give rise to a claim of some species of equitable right or estoppel, compounded by the fact that the lands were never *gazetted* and/or brought into the ambit of Act 530. According to the Court of Appeal, 'without any legitimate legal basis disclosed in the pleadings to the appellants' claim to ownership or rights in the rubber trees planted, neither in law nor in equity, the appellants' claims against the respondents are obviously unsustainable'.

OUR DECISION

[20] Broadly and for a proper appreciation of the context of the plaintiffs and their claims against the respondents, we need to have some rudimentary understanding of the applicable law even for the purposes of determining an application to strike out a claim. In this context, it is Act 530, its purpose and its operation. This understanding is necessary in order to address the question of whether the appellants' claim is 'obviously unsustainable'.

[21] Act 530 is an 'Act for the purpose of ensuring uniformity of law and policy in respect of the establishment of group settlement areas and the

A conditions of alienation and occupation of land in such areas and for other matters incidental thereto'. This Act envisages the opening up and development of State lands through group settlement programmes or projects according to the terms, conditions, restrictions, obligations and arrangements as set out in Parts II to V of the Act.

B

[22] Tracts of State land are first declared as designated areas for the purposes of Act 530 — s 3. In turn, these areas may be declared as group settlement areas — s 4. These group settlement areas may then be declared as rural or urban holdings (ss 5 and 6) and persons eligible under the Act to occupy the holdings occupy the same in expectation of title (ss 12 and 19).

C

[23] Participants who are invited to participate in the programme clear the lands allocated and cultivate crops as specified in s 5 of the Act on such lands. These participants or settlers live in these group settlement areas and form pioneer generations of families.

D

[24] These group settlement areas are developed, managed and administered by a development authority, namely the Federal Development Land Development (better known as FELDA), established under the Land Development Act 1956 ('Act 474') — see s 34 of Act 530 and s 3 of Act 474. By virtue of the National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 ('Act 398'), FELCRA, the Federal Land Consolidation and Rehabilitation Authority, was established. Under s 6 of Act 398, FELCRA was, inter alia, conferred all the powers and duties previously undertaken by FELDA. Pursuant to the National Land Rehabilitation and Consolidation Authority (Succession and Dissolution) Act 1997 ('Act 570'), FELCRA's property, rights and liabilities were vested in a company, FELCRA Bhd, the entity identified in the earlier paragraph.

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[25] In the present appeal, what is clear and undisputed from the pleadings and the affidavits filed is that there is a group settlement area known as KRBT. Whether or not this area has been *gazetted* and its ramifications on the appellants' claim, if at all, is a question for determination at a full trial.

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[26] We appreciate that Suit 1 was dismissed. Suit 1 concerned the issue of acreage allegedly promised to the appellants. But, in Suit 3, we are not concerned with the issue of acreage of the lands allotted to the appellants. The issue is whether the appellants have any legitimate interest in the rubber trees that they had cultivated over the 30-year period as described earlier.

I

[27] Regardless the acreage of the lands comprised in KRBT, the presence and thereby the appellants' occupation and participation in the KRBT is in fact not denied by the respondents. We have already pointed this out. The

respondents were fully aware of the occupation of the appellants and that such occupation as a group settlement area was as envisaged under Act 530. The respondents too, are not suggesting for a moment that the appellants are illegal occupants, squatters or some similar characterisation; and this was confirmed by learned counsel for the respondents in this appeal.

[28] What is also not in dispute is that the appellants had occupied these lands in the KRBT for over 30 years. As mentioned, subject to the conditions under Act 530, occupation in these group settlement areas involves an occupation in expectation of title. During this long-extended period of occupation, the appellants had been allowed to cultivate and did in fact cultivate oil palm trees and rubber trees. Both of these crops are crops designated as appropriate crops to be planted — see s 5 of Act 530 again, as confirmed by learned counsel for the respondents when queried by this court.

[29] The matter of the felling of the rubber trees arose during the pendency of Suit 1. Hence, the issue of res judicata does not arise. It also does not arise in that these were not rubber trees randomly planted by the appellants but were rubber trees planted or cultivated in the circumstances that we have painstakingly described earlier.

[30] What is further not in dispute is that under Act 530, any area of State land, whether or not included in a designated area may be declared to be a group settlement area for the purposes of Act 530 — see s 4.

[31] What was and is in controversy is the manner of selection of the appellants as participants to occupy and cultivate the designated crops under Act 530, that it was by FELCRA Bhd where no agreement was finally drawn up; that the appellants' names were not registered, and that the lands in question were not *gazetted*. Whether in these principal circumstances, the appellants have any interests or rights to the rubber trees that they had cultivated for such a long undisturbed period thereby entitling them to any relief including compensation, is a real and substantive matter or issue of law clearly requiring full and proper examination at trial.

[32] We are in no doubt that on the pleaded facts and circumstances particularly under the restrictions and conditions of Act 530, the appellants do have a reasonable cause of action which merit proper determination and not summarily disposed of in the manner conducted by the courts below. The law on striking out is settled; so long as there is a reasonable cause of action, the matter should proceed to full trial. See *Tan Wei Hong (a minor suing through guardian ad litem and next friend Chuang Yin E) & Ors v Malaysia Airlines Bhd and other appeals* [2019] 1 MLJ 59; *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 3 MLJ 1; *Bandar*

Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd.

[33] As we said at the outset, the four questions of law for which leave was granted by the Federal Court are indicative that there are real issues in law and in fact for determination at a full trial and which in our opinion is sufficient basis to found a cause of action. As such we are of the unanimous opinion that the appeal is allowed with costs and the matter be remitted to the High Court for a full trial. The orders of the High Court and the Court of Appeal are therefore set aside.

[34] Accordingly, we do not see the necessity of answering the four leave questions as these are matters for the High Court to decide.

Appeal allowed.

Reported by Ashok Kumar